IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

Crl.MC.No. 2386 of 2007()

SC.450/2005 of ASSISTANT SESSIONS COURT, THALASSERY

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PETITIONER: ACCUSED NO.4

GANGADHARAN, AGED 47 YEARS,
S/O.SHANKARAN NAIR, P.V.S.VILLA,
TALAP, KANNUR.

BY ADV. SRI.M.K.SUMOD
SRI.KAUSER EDAPPAGATH
SRI.K.R.AVINASH (KUNNATH)

RESPONDENTS:

1. THE S.H.O., KANNUR TOWN POLICE STATION,
KANNUR.

2. STATE OF KERALA,
BOTH RESPONDENTS ARE REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. No.2386 Of 2007

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Dated this the 2nd day of August, 2007

ORDER

Petitioner is the 4th accused in a prosecution under Sec.55(i) of the Kerala Abkari Act. and Sec.135(1) and (2) of the Representation of Peoples Act. The trial in that case was over. The petitioner is the 4th accused. He is a licensee in respect of a Bar. Accused Nos. 1 to 3 are allegedly employees of the petitioner. The 1st accused was not available for trial. The case against him has been split up. Accused Nos.2,3 and 4 were found not guilty and acquitted of all allegations against them.

2. The crux of the allegations is that on 3.3.98 at about 8 p.m. notwithstanding the prohibition for the sale of liquor, accused Nos. 1 to 3, the employees of the foreign liquor shop of which Accused No.4 is the licensee, in violation of the prohibition, sold liquor.

3. From the premises an amount of Rs.84,450/- were seized as per a seizure mahazar. The said amount is not seen marked specifically in the course of the trial. On termination of the trial also no specific directions were issued for release of the amount, which

was seized from the premises of the petitioner. As the case against the 1st accused was split up and trial had to follow, there was a direction that the case records shall be kept in that split up case against the 1st accused.

4. As there was no disposal of the property (cash) when judgment was pronounced by the learned Asst.Sessions Judge on 8.1.07, the petitioner approached the learned Asst. Sessions Judge again with an application for release of the property under Sec.452 Cr.P.C. The learned Assistant Sessions Judge by the impugned order, copy of which is produced as Annexure A6, rejected the said prayer on the short ground that the case against the 1st accused is still pending.

5. The petitioner is aggrieved by the said order. The learned counsel for the petitioner submits that there is absolutely no justification in the insistence that the property (cash) must be continued to be retained in the court. The petitioner has already been acquitted. The property (cash) has not been specifically marked in the trial. Consequent to the acquittal of the petitioner the necessary corollary and legal conclusion must have been

reached and direction must have been issued for release of the amounts in favour of the petitioner, it is submitted.

6. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor does not oppose the said prayer and I am satisfied, in these circumstances, that notwithstanding the fact that the case against the 1st accused was split up, it is not necessary to mark the property(cash) recovered from the premises specifically even in the next trial against the 1st accused. In these circumstances, I am satisfied that directions can be issued to the learned Assistant Sessions Judge, Thalassery to release the said property(cash) of Rs.84,450/- which is being retained in the custody of the Court.

7. In the result, this petition is allowed. The learned Assistant Sessions Judge is directed to release the amount forthwith to the petitioner unconditionally.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE